CCDLA
"READY IN THE DEFENSE OF LIBERTY"
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March 4, 2013

Hon. Eric D. Coleman, Co-Chair
Hon. Gerald M. Fox, Co-Chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Raised Bill 871

Dear Chairmen Coleman and Fox:

CCDLA is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Raised Bill No. 871, Section 1, to the extent that it amends Connecticut General Statute 54-33g (In rem action for adjudication as nuisance) to include as "nuisance property" the *proceeds* of illegal activity and not just property used to facilitate the offense. Including "proceeds" of illegal activity as nuisance property vulnerable to forfeiture, changes the nature of the statute's origins, which appears to have been to dispose of the *thing* that facilitated the offense, but not the allegedly "ill gotten" gains from the offense.

The amendment would, conceivably, include the proceeds of a robbery or other type of larceny where the authorities are actually able to seize the money stolen or property/goods purchased with purloined funds. Subjecting this sort of property to a 54-33g proceeding and a nuisance finding could potentially hinder a victim's recovery of items or money stolen and impose an additional burden on the accused to make restitution to the victim, because the money/property/goods would no longer be available for return or restitution.

Furthermore, CCDLA opposes section 1 where it seeks to amend 54-33g to give the court discretion to award monetary proceeds to the local law enforcement agency that has seized that property and is pursuing the nuisance finding. Attaching this sort of award (beyond the salaries paid to law enforcement) to the seizure and nuisance disposal of property could lead to forfeiture abuse and incentivize law enforcement to bend the rules in carrying out their duties.

CCDLA opposes Section 4 of Raised Bill 871 that proposes increasing the probationary period for CGS Sec. 53a-189a, voyeurism, to 10-35 years. This probationary period has applied to selected sex offenses or sexually related offenses. It has not applied to offenses that are not committed for a sexual purpose. The proposal in Section 4 groups with these sexual offenses a person who commits voyeurism under subsection 1 of the statute *without* sexual motivation or purpose, but simply with *malice*. Combining this sort of non-sexual offense with sexually motivated offenses and punishing individuals convicted of both similarly is arbitrary and unfair.

CCDLA opposes Section 5 of Raised Bill 871 which similarly punishes the individual convicted under subsection 1 of 53a-189a (where the improper conduct was committed with malice and not for a sexual purpose or with intent to arouse sexual interest), by categorizing such offense as a "non-violent" sexual offense under 54-250. The proposal makes no distinction between voyeurism committed under section 1 of 53a-189a (with malice and not for sexual purpose), and voyeurism committed under section 2 of 53a-189a, which requires that the voyeuristic conduct be committed with intent to arouse or satisfy a sexual desire. As with the proposed language in Section 4 of 871, this proposal is arbitrary and unfair.

Finally, CCDLA opposes Section 6 of Raised Bill 871 which seeks to amend CGS Sec. 54-86k to eliminate the requirement that a party intending to offer DNA evidence in a proceeding must notify the opposing party in writing at least 21 days before the proceeding, that she intends to do so and must also "provide or make available copies of the profiles and the report or statement to be introduced." If the proffering party does not comply with the 21 day notice, the court may, within its discretion, bar the presentation of the evidence or grant a continuance to the opposing party.

The deletion of the 21 day notice requirement will have an unfair result that will cause disruption and delay in judicial proceedings. The removal of the 21 day notice requirement is unfair because it enables the proffering party, usually a prosecutor, to wait until the eve of trial to advise the defendant that she seeks to admit the DNA evidence, or to spring the evidence on the defendant in the midst of trial without prior notice. This practice prejudices the defendant because with notice and time prior to trial, the defendant would be able to have his expert review the opposing DNA expert's findings and report and, if necessary, perform her own tests on the evidence. Additionally, last minute disclosure of DNA evidence cripples the defendant because by the time of disclosure, he has already formulated his theory of defense – not contemplating admission of the DNA evidence. Finally, with regard to fairness, removing the 21 day notice requirement encourages improper gamesmanship by the proffering party who may have the results of DNA tests months before trial, know they intend to introduce the evidence at trial, but waits until the last minute to disclose their intent to opposing counsel. This sort of "hide the ball" strategy should not be tolerated and most definitely should not be facilitated by a statutory amendment.

If the 21 day notice requirement is eliminated, CCDLA agrees with the Office of the Public Defender, that the following language be added to the bill:

Any party intending to offer the results of a DNA analysis must notify the opposing party of its intention to do so in writing and shall provide or make available copies of the profiles and the report or statement to be introduced. If he notice provided is less than 21 days prior to the commencement of a proceeding, the court shall grant the opposing party a 30 day continuance, upon request.

Please feel free to contact me if you wish to discuss this further. Thank you for your time and consideration.

Sincerely,

Moira Buckley
President -- CCDLA
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